United Nations A/59/323

General Assembly

Distr.: General
2 September 2004

Original: English

Fifty-ninth session
Item 107 (b) of the provisional agenda*
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Regional arrangements for the promotion and protection of human rights

Report of the Secretary-General

Summary

The present report on regional arrangements for the promotion and protection of human rights has been prepared in accordance with General Assembly resolution 57/210 of 18 December 2002, and contains information on the action taken pursuant to that resolution. The report focuses on the regional strategies of the Office of the United Nations High Commissioner for Human Rights and the most significant developments since 2002.

In order to maximize the impact of the activities of the United Nations at the national level, the Office of the High Commissioner has been systematically pursuing a regional and subregional approach through a variety of complementary means and methods, in particular by supporting the establishment of regional frameworks for the promotion and protection of human rights, adopting a subregional focus wherever appropriate, outposting regional and subregional representatives, concluding cooperative agreements with United Nations agencies and regional institutions, undertaking joint regional projects, and sponsoring or organizing consultations and dialogues.

* A/59/150.

04-49845 (E) 280904

I. Introduction

1. In its resolution 57/210 of 18 December 2002, the General Assembly requested the Secretary-General to submit to it at its fifty-ninth session a report on the state of regional arrangements for the promotion and protection of human rights, to formulate concrete proposals and recommendations on ways and means to strengthen cooperation between United Nations and regional arrangements in the field of human rights, and to include therein the results of action taken in pursuance of that resolution.

2. The present report focuses on the regional strategies of OHCHR and the most significant developments since 2002, when the Secretary-General submitted to the General Assembly the previous report on the subject (A/57/283).

II. Regional strategies of the Office of the United Nations High Commissioner for Human Rights

3. Progress in protecting and promoting human rights depends primarily on actions taken at the national level — actions that are directly linked to the full application of the provisions of core international human rights treaties. However, in order to maximize the impact at the national level of the activities of the United Nations, OHCHR has been systematically pursuing a regional and subregional approach through a variety of complementary means and methods, including, in particular, the following:

(a) Supporting the establishment of regional frameworks for the promotion and protection of human rights;

(b) Adopting a subregional focus wherever appropriate;

(c) Outposting regional and subregional representatives;

(d) Concluding cooperative agreements with United Nations agencies and regional institutions, undertaking joint regional projects, and sponsoring or organizing consultations and dialogues.

4. The Framework for Regional Technical Cooperation for the Asia-Pacific Region, the first arrangement of its kind, was established by Governments of the region at Tehran in 1998, when agreement was reached on the four pillars of the Framework, namely, (a) elaboration of national plans of action in the field of human rights; (b) establishing and strengthening national institutions; (c) promotion of human rights education; and (d) strategies for economic, social and cultural rights and the right to development. The most recent two-year programme of action under the Framework was adopted at Doha in March 2004.

5. In 1999, several Governments of the Latin American and Caribbean region adopted the Quito Framework for Technical Cooperation in the Field of Human Rights, which also has the above-mentioned four pillars, plus a fifth one, concerning the protection of vulnerable groups. A number of activities were undertaken in Uruguay in 2001 for MERCOSUR (South American Common Market), in Peru for the Andean region and in Argentina for the Latin American and Caribbean region as a whole, as part of the implementation of the Quito Framework.

6. The International Conference on Human Rights and Democratization, held at Dubrovnik, Croatia, in October 2001 in partnership with the Government of Croatia, the European Commission, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE), stressed the particular importance of providing support to the fledgling civil societies in Eastern Europe, the Caucasus and Central Asia, strengthening the links to United Nations standards and mechanisms and developing national plans and infrastructures for human rights as well as human rights education activities.

7. In Africa, OHCHR efforts are focused primarily on a subregional approach in Southern, Central, East and West Africa. Consultations and dialogues on priority issues have been initiated with Governments and various sectors of African society, including politicians, lawyers, academics and civil society institutions. The African Regional Dialogue I, held in Geneva in November 2001, and Dialogue II, held in Arusha, Tanzania, in May 2002, produced tangible results, providing guidance to Governments, regional organizations and non-governmental organizations and better links with the New Partnership for Africa's Development (NEPAD), the African Union and other subregional organizations.

8. OHCHR has developed projects of cooperation with several Arab countries and has identified several key issues of common concern, including human rights awareness-raising, civil society networking and training, and the need to translate human rights training materials into Arabic. A joint regional project with United Nations Development Programme (UNDP) on these issues is now in operation. The Arab Charter on Human Rights deserves special mention for being a promising endeavour that enjoys OHCHR's substantial support.

9. The OHCHR provides support to the regional secretariats of National Institutions. This partnership strategy vis-à-vis National Institutions emphasizes the establishment and strengthening of regional networks and provides support not only for the annual meetings of regional networks but for substantive initiatives, such as the respect for human rights in combating terrorism (Mexico, September 2003, and Nepal, February 2004), investigation techniques (Sri Lanka, November 2003) indigenous people's rights (Colombia, March 2004) and prevention of torture (Argentina, June 2004).

Outposting of regional and subregional representatives

10. The placement by OHCHR of regional representatives began recently with the establishment of presences in two subregions (that of the Southern African Development Community at Pretoria, and that of the Economic Community of Central African States at Yaoundé), as well as at the regional commissions for Latin America and the Caribbean, Asia and the Pacific, Western Asia and Africa. The posting of OHCHR regional and subregional representatives at Santiago, Bangkok, Beirut and Addis Ababa allows for closer working relationships with States, United Nations country teams, international and regional organizations, and non-governmental organizations.

Cooperative arrangements with United Nations and regional organizations and institutions

11. The development of new relationships, in particular with regional organizations and institutions, has been a major focus of OHCHR action. A number

of memorandums of understanding have been concluded in the past few years - such as with UNDP, the regional commissions and, more recently, with the League of Arab States in the second quarter of 2002. These arrangements have resulted in concrete practical collaborative efforts that facilitate the integration and mainstreaming of human rights into the work programmes of OHCHR partners.

III. Regional frameworks

A. Africa

12. OHCHR's regional arrangement in Africa is on two levels. First, support to the African Union (AU) for the strengthening of its human rights system and, secondly, subregional representation to strengthen national and subregional human rights capacities.

13. On the first level, OHCHR supported the AU secretariat in Addis Ababa in developing a programme to facilitate the mainstreaming of human rights in its policies and activities; its campaign for ratification of the Protocol for the Establishment of the African Court; and for the finalization of the process towards the adoption of the Protocol on the rights of women. The women's protocol was adopted in July 2003 by the AU Summit. The Office also assisted African civil society and national institutions' participation in the work of the African Human Rights Commission, through grants and fellowships. In respect to other human rights-related programmes of AU, OHCHR has been involved in capacity-building programmes tailored towards the effective mainstreaming of human rights in the implementation of NEPAD and the African Peer Review Mechanisms at the different levels.

14. At the request of AU, OHCHR supported the realization of the second AU Ministerial Conference on Human Rights, which took place in May 2003, in Kigali. The then Deputy High Commissioner for Human Rights led a delegation of African experts from civil society, research institutions and national human rights institutions to participate in the Conference. OHCHR also facilitated the NGO preparatory meeting, held in Nairobi and the preparation of background papers for the Conference.

15. As the oldest treaty body in Africa, the African Commission on Human and Peoples' Rights (African Commission) continued to benefit from substantive and technical assistance from OHCHR through a peer-learning process, involving the exchange of staff and participation of African Commission members in United Nations treaty body meetings. This has contributed to the improvement of the Commission working methods and collaboration with the treaty bodies.

16. Furthermore, in response to a request from the African Commission, the Office facilitated a retreat of its members, held from 24 to 26 September 2003 in Addis Ababa. The retreat was designed as an opportunity to reflect critically on the functioning of the African human rights system and make concrete suggestions to improve the methods of work and procedures of the Commission and strengthen its secretariat.

17. From 10 to 12 March 2003, the Office organized an Expert Regional Consultative meeting on human rights and regional integration in Africa in

collaboration with the Legon Centre for International Affairs in Accra. The meeting brought together 46 participants drawn from various international, regional and subregional organizations, United Nations agencies, non-governmental organizations in Africa as well as representatives of the Organisation internationale de la francophonie.

18. At the subregional level, the OHCHR offices in Southern Africa, Central Africa, East Africa were the main focal points for the mainstreaming and integration of human rights within United Nations country teams (UNCTS) and in the work of regional and subregional institutions, thus facilitating the provision of technical assistance, strengthening of capacities at the national level and the implementation of conclusions and recommendations of treaty bodies and mechanisms of the Commission on Human Rights. In addition, the offices, through their relationship with the subregional economic communities, had the responsibility of facilitating subregional responses to issues of a transnational nature. The regional offices also serve to monitor human rights developments at the national level which help to sharpen OHCHR programs and increase their relevance and benefit for regional actors.

19. The regional office in Addis Ababa played a very important role in the regional dialogues undertaken in the transition process for the Africa Union, especially on issues relating to human rights, democratic and good governance and the rule of law. The Office's ability to interact closely with key regional actors has proven invaluable and the presence of a regional office in Addis Ababa invariably put a focus on human rights thus facilitating the integration of human rights in the continental vision. Its collaboration with the Economic Commission for Africa (ECA) offers the opportunity for OHCHR to refine its conceptual approach and to test the tools and instruments to promote rights-based development. In 2003, the Regional Office participated in planning of the African Development Forum and made substantial input to the African Governance Report. It has also been disseminating appropriate literature on the rights-based approach to development and organized a workshop with the African Centre on Gender and Development.

20. In the context of the East African countries it covers, the regional office in Addis Ababa has conducted various activities in Kenya, Uganda, Djibouti, Tanzania, Ethiopia and Eritrea, including facilitating the creation of a human rights focal group within the UNCT. In 2003, it implemented programmes involving training, workshops, seminars and the development of manuals to promote a human rights culture at the national level, working closely with other agencies and a network of civil society organizations.

21. In 2003, the Southern Africa regional office, co-funded by OHCHR and UNDP, carried out three cluster training workshops that benefited approximately 200 participants from Governments, civil society organizations and UNCTs in the region, on "the implementation of the human rights standards" (Mbabane, Malawi, 10-12 June 2003), "human rights and governance" (Mauritius, 10-12 September 2003) and "the contribution of civil society to the promotion and protection of human rights in Southern Africa" (Pretoria, 28-29 November 2003).

22. The cluster approach adopted for the above-mentioned activities was cost-effective and conducive to exchange of experiences within group of countries sharing similar realities or willing to learn from best practices in their region and establish networks. Experts and resource persons were drawn from human rights

research institutions within the region, which are familiar with both the theory and practice of human rights. UNDP offices and resident coordinators, both in the participating countries and in the host countries, provided commendable support in the preparation and facilitation of these workshops.

23. In addition to these workshops, the Southern African Office was able to provide technical advice and limited assistance to partners — such as the secretariats of AU, SADC, NEPAD and national Governments, institutions of civil society such as academic, religious, cultural institutions, and private-sector establishments.

24. In the fulfilment of its mandate, the Subregional Centre for Human Rights and Democracy in Central Africa continues to run programmes and activities enhancing the task of the United Nations in the promotion of human rights, democratic principles and values in the subregion.

25. In the years under review, subregional workshops and seminars focusing, inter alia, on human rights education and related aspects of the administration of justice, and more particularly military justice, human rights and the rule of law for media professionals, and the rights of minorities and vulnerable groups (women and children) in Central Africa, have been given to key leaders, human rights activists and representatives of civil society.

26. In accordance with the Memorandum of Understanding signed in July 2002 between the United Nations High Commissioner for Human Rights and the Secretary-General of the Economic Community of Central African States (ECCAS), the Subregional Centre provided technical assistance to the ECCAS secretariat with the aim of reinforcing its analytical capacities and enhancing the operability of the subregional Mechanism for Early Warning (MARAC). The two institutions are also involved in joint activities of a subregional character.

27. In West Africa, OHCHR intensified its discussions with the Economic Community of West African States (ECOWAS) with a view to establishing a subregional presence that would assist in the development and implementation of a human rights framework in the subregion.

28. OHCHR provided support to the secretariat for the Coordinating Committee of African National Human Rights Institutions, since its creation in 2002 by the fourth Regional Conference of African National Human Rights Institutions.

B. Arab region

29. The Regional Office for the Arab region in Beirut was established in February 2002 following a Memorandum of Intent signed between OHCHR and the Economic and Social Commission for Western Asia (ESCWA), as part of an overall strategy aimed at enabling OHCHR to respond more adequately and strategically to the human rights needs of respective Arab countries. The mandate of the office included working with Governments for the promotion and protection of human rights, the ratification of international instruments, conformity of national legislation with international obligations, reporting to treaty bodies and assistance to judiciary, police and government officials on the rule of law and human rights.

30. The Office works to promote the implementation of the international human rights instruments and to provide support to special procedures of the Commission on Human Rights. Technical assistance or advisory services are being provided, especially on the use of OHCHR Guidelines (on poverty reduction, trafficking, HIV/AIDS, internally displaced persons and gender mainstreaming) and on methodological tools, such as the Professional Training Series manuals.

Cooperation with ESCWA and UNCTs on mainstreaming human rights in development programmes and activities and promoting a right-based approach

31. The Regional Office in Beirut is committed to raising awareness among UNCT members of specific recommendations of United Nations human rights bodies with a view to integrating them better into their programming as well as into the common country assessment and United Nations Development Assistance Framework (CCA/UNDAF) processes. With a view to mainstreaming human rights, the Regional Representative supports the establishment of thematic human rights working groups within UNCTs, and advises them on human rights priorities.

Working with civil society organizations through capacity-building, training, participation in national and regional activities and providing NGOs with documentation

32. As a result of the work of its Regional Office, OHCHR has been able to strengthen its partnerships outside the United Nations system, in particular with regional and national organizations, including NGOs.

33. In 2002, a Memorandum of Intent on cooperation in the field of protection and promotion of human rights was signed between OHCHR and the League of Arab States (LAS). Pursuant to this Memorandum, OHCHR organized a week-long training course in September 2003 for staff from the League secretariat. The course aimed to develop stronger working relations between the two organizations, to promote a better understanding of the work of OHCHR among LAS staff, and to familiarize them with international human rights instruments and mechanisms.

34. Within the framework of OHCHR-LAS cooperation, considerable emphasis is placed on the progress of the Arab Charter on Human Rights. Thus, OHCHR established a committee of five experts, from Qatar, Tunisia, Saudi Arabia, Egypt and Algeria, to comment on the draft Arab Charter for Human Rights finalized by the Arab Human Rights Commission in October 2003. In December 2003, the experts held a series of meetings with the League of Arab States Secretariat in Cairo and submitted their recommendations to the Arab Commission. In January 2004, the Commission adopted the new text, which reflects many of the recommendations made by the experts. The final text of the Charter was finally adopted by the Arab Summit, held in Tunis on 22-23 May 2004. Despite concerns about some parts of the Charter, the current document constitutes a major improvement over the 1994 text because it addresses certain issues, such as states of emergency, fair trials, slavery, sexual violence, disability and trafficking, which were either omitted or not well formulated in the earlier version. It also creates a promising monitoring mechanism similar to the Human Rights Committee.

35. Following the recent adoption of the Arab Charter, OHCHR intends to develop a broader technical cooperation programme in cooperation with LAS, with a view to enhancing its human right capacities. In addition, OHCHR will continue the

consultations initiated with the secretariat of LAS by inviting senior officials to participate in conferences and events organized in the Arab region.

36. In December 2003, OHCHR organized in Damascus a subregional training workshop for government officials, NGOs and the national human rights institution in Jordan (National Centre for Human Rights) and other stakeholders from Jordan, Lebanon and the Syrian Arab Republic on implementation of the concluding observations of the Committee on the Rights of the Child.

37. The recommendations called for, inter alia, the strengthening of coordination and cooperation among government structures and civil society, with the participation of youth and children, in order to enhance implementation of human rights obligations.

38. In February 2004, in the context of the Asia-Pacific Regional Framework, OHCHR organized in Doha the Subregional Workshop on Human Rights Education in School Systems of the six States of the Gulf Cooperation Council (GCC). Representatives of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates attended the workshop. In addition, the observer for Yemen also took part in the workshop. Several national and regional NGOs, as well as national human rights institutions, were invited. A significant outcome of the workshop was the adoption of a number of recommendations including, at the policy level, closer cooperation in the field of human rights education, and more specifically, encouraging the concerned bodies in the GCC member States to ratify and study the international and Arab conventions and treaties related to human rights, to develop national strategies and plans in the field of human rights education, and to expand their activity with regard to introducing human rights education principles and goals in educational regulations. The workshop also called for increased efforts towards integrating human rights into school and university curricula, and for training to be considered as a basic part of the strategies of human rights education.

39. The Regional Project on Human Development and Human Rights (PARDHUR) is a joint project of OHCHR and UNDP, agreed upon in 2002. Currently implemented by the Arab Organization for Human Rights (AOHR), it aims at fostering dialogue in the Arab region between Governments, civil society and researchers, towards improved protection and promotion of economic, social and cultural rights and the right to development. Within the framework of this project, a series of round tables was organized on specific themes related to human rights conventions and their relevance for a human rights-based approach to development for the benefit of parliamentarians, senior policy-level government officials, educators, private sector leaders and public-opinion makers, journalists and NGOs. During the reporting period, the following round tables included:

(a) A workshop on human rights and the media was held in Cairo, 21-22 January 2003. This workshop provided numerous constructive discussions on the challenges facing freedom of the media, the technical ambiguities found in the media's handling of human rights issues and regarding the role played by the media in promoting the respect of human rights and in encouraging human development in the Arab region, as well as the means to support the United Nations' message in the Arab media;

(b) A workshop on social, economic and cultural rights held in Morocco, in July 2003, organized by AOHR and the Moroccan Documentation and Information

Centre. The regional representative of UNDP-RBAS and some 60 representatives of Arab NGOs and activists, from 13 Arab countries, attended the workshop;

(c) A workshop on the Convention on the Elimination of All Forms of Discrimination against Women and on violence against women was organized in Beirut, on 26-27 January 2004, with a large participation of Arab women from the region, in particular from the Gulf countries;

(d) A workshop on the role of civil society in the reform process in the Arab world was held in Alexandria, Egypt, in June 2004. Both the Beirut and the Alexandria workshops saw the participation of representatives from civil society and Arab Governments, as well as United Nations agencies. These were opportunities to analyse the obstacles to full participation of women and civil society in the process of reform. In addition, these workshops encouraged constructive dialogue between Governments and components of civil society, as well as to promote human rights in general. These two workshops equally made it possible to encourage the League of Arab States and the States in the region in their efforts to modernize the Arab Charter and to adopt the revised text;

(e) Publications were produced for dissemination and the Arabic-language web site (www.arabhumanrights.org) was developed.

C. Asia and the Pacific

40. OHCHR has strengthened its efforts towards reinforcing regional cooperation for human rights in Asia and the Pacific. Two annual workshops of the Framework on Regional Cooperation for the Promotion and Protection of Human Rights in the Asian-Pacific Region (hereinafter, the Asian-Pacific Framework) were organized at Islamabad in 2003 and at Doha in 2004. These workshops have continued to follow a "step-by-step", "building block" approach by taking stock of achievements made in the following four priority pillars, as identified in the 1998 Tehran Annual Workshop: national human rights action plans; national human rights institutions; human rights education; and strategies for the realization of economic, social and cultural rights and the right to development. As such, in the context of the Asian-Pacific Framework, ongoing consultations aimed at the possible establishment of regional human rights arrangements have been held among Governments with the support and advice of national human rights institutions and civil society organizations of the Asian-Pacific region.

41. The following intersessional activities were also undertaken: a Subregional Workshop for Judges and Lawyers on the Justiciability of Economic, Social and Cultural Rights was organized by OHCHR in cooperation with the International Commission of Jurists as well as with the substantive support of the International Bar Association (26-28 January 2004, Ulaanbaatar, Mongolia); a study on popular and non-formal human rights education in the Asia-Pacific Region was carried out in February 2004; and the 8th Annual Meeting of the Asia-Pacific Forum (APF) was held from 16 to 18 February 2004, in Kathmandu with the support of OHCHR.

42. The Doha twelfth Annual Workshop of the Asian-Pacific Framework adopted a two-year plan of action for 2004-2006, which is to be implemented over the next two-year period, subject to the availability of resources from the Voluntary Fund for Technical Cooperation in the Field of Human Rights. The Doha Programme of

Action has the following main objectives under each of the above-mentioned four pillars:

(a) To gather lessons learnt and best practices in the region and to develop tools for the development of national plans of action;

(b) To strengthen national capacities for human rights education with a focus on the incorporation of it within the school system;

(c) To support regional initiatives to strengthen the role of national human rights institutions and the Asia-Pacific Forum; and

(d) To strengthen national capacities to realize economic, social and cultural rights and the right to development.

43. In the conclusions of the Doha Annual Workshop, participants reaffirmed their commitment to enhancing subregional, regional and international cooperation to promote universal respect for, and observance of, human rights and fundamental freedoms, in conformity with international obligations. Moreover, in response to the need for adjusting the current pattern of annual workshops linked with the four pillars, Governments at the workshop not only recognized the achievements made thus far through the Asian-Pacific Framework, but also welcomed the possible inclusion in the upcoming annual workshops of a thematic focus, whose theme is to be decided upon by member States.

44. These intergovernmental efforts are complemented by the work of the OHCHR Regional Representative for Asia-Pacific, based in Bangkok. The Regional Representative endeavours to strengthen government actions as well as to help the United Nations system and civil society make interventions to assist Governments better protect human rights. The project under which the Regional Office operates aims at: promoting the implementation of the rights-based approach to development by the United Nations system; helping to establish or strengthen national human rights protection systems; helping the United Nations human rights system make more effective protection interventions; maximizing the cooordinated impact in Asia-Pacific of OHCHR work on priority themes and deepen the Asia-Pacific regional perspective in OHCHR's global work on these themes; and, developing more cooperative relationships with Governments in the region.

45. An important function of the Regional Representative has been to facilitate exchanges of information and experiences from the region. The quarterly Practitioners' Forum on Human Rights in Development was held in 2004 on such topics as the lessons learned from UNICEF's experience with the rights-based approach, UNDP's rights-based access to justice projects and the right to education. Under the auspices of the regional Forum, the first-ever national Forum was convened in China in March 2004, entitled "The rights-based approach to development".

46. Facilitating the exchange of practical information is a primary function of the office of the regional representative. In this regard, the office has initiated a small project ("Human Rights Approach to Development — Lessons Learned") intended to draw lessons from development programmes in the region that have sought to implement a human rights approach. The Lessons Learned Project is expected to conclude in the early part of 2005. A second tool for facilitating information exchange in this area is the Rights-Based Approach (RBA) Database, which makes

readily available a wealth of documents relevant to the human rights approach to development. The RBA database can be found at www.un.or.th/ohchr/database/RBAUserSearch.asp. The office of the Regional Representative also regularly updates and disseminates a range of information resources (available at www.un.or.th/ohchr), including on the major human rights news in the region, highlights from international human rights meetings and conferences, on ratifications of and reservations to the core human rights treaties, reporting by States on their implementation of the treaties, and visits to countries in the region by thematic and country experts of the Commission since 1993. Finally, the Regional Representative also makes available a range of training materials on various human rights topics.

47. Training is another major focus of the work of the Regional Representative. The office of the Regional Representative has assisted a number of UNCTs develop strong CCA/UNDAFs, contributing resource persons on the human rights aspects of the CCA and UNDAF processes in global workshops, and delivering more targeted human rights training to UNCTs, including in Vietnam, Indonesia and Suva. In addition, the Regional Representative is working with various divisions and units of ESCAP to increase understanding and awareness of human rights through regular, brief training sessions on the rights-based approach.

48. The Regional Representative actively contributes to the airing of views by civil society in the region. Civil society networks on human rights issues are vibrant in some areas, and have grown stronger, particularly since the Vienna World Conference on Human Rights, but remain extremely weak elsewhere. Human rights defenders have come under attack in most of the sub-regions. Thus, the Regional Representative has worked to bring together civil society representatives on a subregional basis, by holding annual consultations, previously in South and Southeast Asia, and more recently, in 2004, in the Pacific region.

49. In addition, the Regional Representative helps to bring members of civil society together, along with United Nations, governmental and development cooperation agencies, around particular issues. In March 2004, the Regional Representative and its partner agencies and organizations convened an Expert Meeting on HIV/AIDS and Human Rights in Asia-Pacific. This expert meeting was part of a broader project to develop recommendations on integrating human rights into HIV/AIDS responses in Asia and the Pacific. The Regional Office is exploring how best to support national-level follow-up activities with potential partners.

50. Another issue-specific initiative was a Regional Housing Rights Dialogue organized by ESCAP in June 2004. The Regional Representative collaborated closely with ESCAP in organizing the dialogue, which brought together grass-roots actors and housing rights advocates to explore the usefulness of a rights-based approach to housing issues. The results of the dialogue were presented to the ESCAP Subcommittee on Poverty Reduction, and further follow-up actions are being examined.

51. The Regional Representative continues to support further expert and civil society consultations on specific rights being organized by ESCAP. Agreement has been reached to collaborate in the immediate future on issues relating to the rights of elderly persons.

52. In mapping out the needs in the region and the resources available to fulfil them, OHCHR keeps its priorities under constant review to ensure responsiveness to emerging needs. One such area is the Pacific, whose representatives at international and regional forums indicate the need for separate attention, including on human rights matters. The Pacific countries have recently emerged as an important area for OHCHR support.

53. Following a recommendation of the Doha Annual Workshop, OHCHR has begun to examine the possibility of establishing a presence in the Pacific. To this end, OHCHR completed a needs-assessment mission to the Pacific (12 May to 4 June 2004) in order, inter alia:

(a) To assess the need for involvement by OHCHR in the work of the UNCT, based in Fiji, by discussing ways and means of cooperation with regard to human rights support to existing programmes, as well as of mainstreaming human rights into the work of the UNCT; and

(b) To hold consultations with the Governments concerned, national human rights institutions (Australia, Fiji and New Zealand), APF, donor agencies (AUSAID and NZAID), human rights NGOs and other civil society organizations with a view to identifying and assessing technical assistance needed to strengthen national human rights protection systems in the Pacific.

54. OHCHR, through the Regional Representative, also co-organized the Pacific Human Rights Consultation (1-3 June 2004) in cooperation with APF, the Fiji Human Rights Commission and the Commonwealth Secretariat, with financial support from NZAID. The participants in this consultation recognized, inter alia, the importance of implementing basic minimum human rights norms and standards and called on donors and regional and international agencies to assist Pacific Island nations in applying such standards through a range of initiatives, such as the possible establishment of an OHCHR human rights adviser in the UNCT in Fiji to identify technical cooperation needs in the Pacific and work with all relevant human rights partners.

55. Specialized national institutions are particularly useful mechanisms for human rights protection. OHCHR actively contributes to the establishment and strengthening of national human rights institutions in the region by directly lending technical and legal advice and political support, as well as collaborating with other multilateral and bilateral actors active in this field. Specialized capacity-building activities are strongly supported, including through the Asia-Pacific Forum of National Human Rights Institutions, a peer support organization comprised of national institutions. OHCHR is a founding sponsor of APF.

D. Europe

56. In Europe, Central Asia and the Caucasus, OHCHR further intensified its cooperation with regional organizations, including the Council of Europe, OSCE and the European Union, and with regional civil society organizations and networks, such as the International Helsinki Federation. OHCHR's activities in the countries in Europe, Central Asia and the Caucasus reflect key features of the United Nations human rights programme highlighted in the Vienna Declaration and Programme of Action, including support to the treaty bodies and special procedures, national

institutions, national plans of action and human rights education. OHCHR continued to consolidate subregional approaches by establishing programmes for Central Asia and South-East Europe, and by conducting planning activities for the Caucasus. The subregional approaches summarize activities on the national level of the countries concerned. The approach is intended to complement the work of United Nations agencies, OSCE, the Council of Europe, the European Union and other international actors and focus on key human rights gaps not covered by the mandates of these organizations. The activities of OHCHR are mainly to provide advice on human rights mainstreaming within common strategic approaches by international or regional organizations.

57. OHCHR, the Council of Europe and OSCE maintained high-level contacts on a regular basis. The director of the Office for Democratic Institutions and Human Rights of OSCE, Mr. Christian Strohal, addressed the Commission on Human Rights at its fifty-ninth and sixtieth sessions in Geneva. In November 2002, the High Commissioner addressed the Permanent Council of OSCE in Vienna. In December 2002, the High Commissioner participated in the 10th Ministerial Meeting of OSCE held at Porto, Portugal, where he highlighted areas of cooperation, including human rights and terrorism; technical assistance programmes in Central Asia and the South Caucasus; human rights training throughout the region; and strengthening of national human rights institutions and ombudsmen.

58. OHCHR has numerous funding arrangements with the European Commission in support of its field presences and technical cooperation projects, such as a project on supporting rights-sensitive transitional justice arrangements in post-conflict and post-crisis countries, which started in June 2002.

59. OHCHR was invited to participate in discussions that started at NATO in 2003 and led to the development of a policy regarding trafficking, adopted in June 2004, and endorsed by NATO and the Heads of State and Government at the Istanbul Summit.

60. Working-level consultations on human rights issues continue to be held between OHCHR and the two regional organizations, both at their respective headquarters and in the field. OHCHR works with OSCE, the Council of Europe and other organizations in the Gender Task Force and the Trafficking Task Force of the Stability Pact for South-Eastern Europe. Objectives of cooperation include the development of a common regional approach and the promotion of legal frameworks to prevent trafficking and provide protection to victims. OHCHR, OSCE Office for Democratic Institutions and Human Rights and UNICEF issued jointly, in December 2003, an updated report on trafficking in human beings in South-Eastern Europe, prepared within the framework of the Stability Pact for South-Eastern Europe. The report presents the current situation and responses to trafficking in the countries of the subregion.

61. OHCHR continues to coordinate and implement its country activities in consultation with OSCE missions and Council of Europe information centres in the field. Together with OSCE, OHCHR continues to operate a human rights office in Abkhazia, Georgia, which is part of the United Nations Observer Mission in Georgia.

62. In the subregion of Central Asia, OHCHR started implementing the four-year Regional Project for Central Asia that covers Kazakhstan, Kyrgyzstan, Tajikistan

and Uzbekistan. The project aims at raising broad public understanding of human rights thereby promoting respect for fundamental liberties and societies based on democratic principles and strengthen national capacities in the field of human rights education. In March 2004, the OHCHR Regional Adviser for Central Asia was deployed to the region. The adviser, who serves as a resource person for governments, policy-makers, scholars, civil society and others to develop human rights policies, works in close cooperation with the OSCE offices in the countries and participates actively in conferences and high-level meetings organized by OSCE.

63. The Council of Europe and OSCE are key regional partners in the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. OHCHR organized two regional expert seminars to study modalities for the implementation of the Durban Declaration and Programme of Action: one hosted by the Government of the Czech Republic for Eastern Europe (see E/CN.4/2004/17/Add.1), held in Prague from 24 to 26 September 2003, and one hosted by the Government of Belgium for Western Europe (E/CN.4/2004/17/Add.2), held in Brussels from 10 to 12 December 2003.

64. At the Conference on Anti-Semitism organized by OSCE in Berlin (April 2004), an OHCHR representative made a presentation on the role of CERD, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Anti-Discrimination Unit of OHCHR in the monitoring of anti-Semitism. Following the conference, a process of consultations was started with the Office for Democratic Institutions and Human Rights (ODIHR) of OSCE to explore future cooperation and to discuss the rationalization of reporting requests addressed to States. OHCHR also participated in the OSCE meeting on the relationship between racism, xenophobic and anti-Semitic propaganda on the Internet and hate crimes, held in Paris in June 2004.

65. OHCHR has maintained close contact with regional organizations in Europe on the issue of respect for human rights in the context of counter-terrorism, in follow-up to the agreement reached at the Fifth High-Level Meeting between the United Nations and Regional Organizations in July 2003. The Office participated in a meeting in Vienna in March 2004, co-hosted by the United Nations Office on Drugs and Crime (UNODC) and OSCE, on improving cooperation between the Counter-Terrorism Committee of the Security Council and regional organizations. Also in March, OHCHR joined OSCE/ODIHR at a workshop on the protection of human rights while countering terrorism in Copenhagen. OHCHR and ODIHR are jointly preparing briefing materials on the relationship between human rights and terrorism for use in training programs.

66. At the request of the Ombudsman of Azerbaijan and UNDP, OHCHR participated in a round table of Central Asian Ombudsmen in Baku on 21 and 22 November 2003. The workshop looked at ways to reinforce cooperation among the ombudsmen and national institutions in Central Asia and to reinforce their commitment to compliance with the international standards concerning national institutions.

67. On 17 and 18 December 2003, OHCHR participated in a Council of Europe ad hoc brainstorming working group on irregular migrants, held in Strasbourg, France. The ad hoc working group on irregular migrants was set up by the secretariat of the Council of Europe to help prepare a report or study for the European Committee on

Migration, on the protection and promotion of the human rights of irregular migrants. The working group discussed concrete obstacles that irregular migrants seem to face with respect to, inter alia, health, employment, housing, education, residence and legal aid. The focus of the discussion was on the situation in different member States of the Council of Europe.

68. OHCHR supports the regional network of national human rights institutions of the European region, by providing information, regular updates and facilitating meetings during the sessions of the Commission on Human Rights.

E. Latin America and the Caribbean

69. Following consultations with Member States and national, subregional and regional institutions and experts in the field of human rights from Latin America and the Caribbean, OHCHR organized a regional workshop in Quito from 29 November to 1 December 1999. During this workshop the Quito Framework for Technical Cooperation in the Field of Human Rights was adopted. Participants in the workshop represented Governments, national human rights institutions, networks of non-governmental organizations, United Nations agencies and regional institutions. The Quito Framework has served as the basis for the regional strategy of OHCHR in Latin America and the Caribbean.

70. The long-term aim of the Quito Framework is to strengthen national capacities for the promotion of human rights in Latin America and the Caribbean through: (a) the development of national plans of action for the promotion and protection of human rights; (b) human rights education; (c) the establishment or strengthening of national human rights institutions; (d) the outcome of strategies for the development of economic, social and cultural rights; and (e) the promotion of the human rights of women, children and vulnerable groups.

71. Taking into account the main concerns affecting the Latin America and Caribbean region, OHCHR decided to mainstream human rights within the UNCTs and to prioritize activities at the national level through the joint implementation of activities with UNCTs. The second priority was to design regional and subregional strategies to deal with common concerns relating to the administration of justice, the realization of economic, social and cultural rights and the protection of vulnerable groups.

72. In 2003 the overriding strategy of OHCHR for its activities in the Latin American and Caribbean region, was the implementation of Action 2 of the Secretary-General's reform program. Action 2 calls for the OHCHR to work with UNCTs to strengthen national protection systems. The adoption of the Quito Framework in 1999 was the first concrete step in the elaboration of OHCHR's strategy for the Latin America and Caribbean region but, other two steps have been taken since then: an agreement with the Economic Commission for Latin America and the Caribbean (ECLAC) in December 2000 for the establishment of the office of the Regional Representative of the OHCHR; and a series of consultations with United Nations partners, regional institutions and regional NGO networks, in order to address regional human rights concerns and identify joint priorities.

73. In April 2002, OHCHR approved a regional project for the promotion and protection of human rights in the Latin America and Caribbean region, which has

the Quito Framework as a reference. This project was extended until December 2004. In the framework of this regional project, the following activities were implemented during the reporting period:

(a) In March 2003 a consultation was held with United Nations and other international and regional partners in Barbados, as a step towards developing a specific approach for the English-speaking Caribbean. Some 30 representative of United Nations agencies, international cooperation agencies and of civil society organizations participated;

(b) In April 2003, the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), in cooperation with the OHCHR, completed a study on prison conditions for women in Central American countries;

(c) A regional workshop on the elaboration of strategies for the adoption and implementation of policies of affirmative action for Afro-descendants in the LAC region was held in May 2003 in Montevideo. Some 65 persons representing Governments, associations of national institutions and international financial agencies and non-governmental organizations participated;

(d) In May 2003 and April 2004, grants were provided to the Inter-American Institute for Human Rights (IIHR) to support the existence of an OHCHR human rights Chair in the annual training course of the IIHR. The objective of these grants is to facilitate the dissemination and the knowledge of international human rights instruments, the mechanisms of the Commission of Human Rights and the work of the Office of the High Commissioner;

(e) A workshop on reporting obligations for Spanish-speaking countries of Latin America and Equatorial Guinea was held in Tegucigalpa in May and June 2003. In addition to the 20 representatives of Governments, seven UNCTs, 14 national institutions and three NGOs participated at the workshop;

(f) In November 2003, a workshop on human rights for staff of ECLAC and members of the UNCT in Chile was held in Santiago de Chile. Some 35 persons participated;

(g) From 24 to 26 February 2004, OHCHR in coordination with the ILANUD organized a workshop on prison conditions for women in the Central American countries in Costa Rica. Representatives from Governments, national institutions and NGOs from seven countries of the subregion participated in this workshop. A declaration and a follow-up action plan were adopted by the participants.

74. In November 2001, the High Commissioner appointed a Regional Representative for the LAC region, based at ECLAC in Santiago. Since then, the Regional Representative has continued to facilitate the mainstreaming of human rights within ECLAC, and several UNCTs of the region. He also continued strengthening cooperation with regional institutions, including the Inter-American Commission on Human Rights, the Inter-American Institute for Human Rights, ILANUD and others. In May 2003 the office of the Regional Representative was strengthened with the temporary assignment of a substantive officer from OHCHR.

75. The Regional Representative has been providing permanent advisory services on human rights and related issues at the request of ECLAC. In this regard, the Office of the Regional Representative has established an electronic network of

information distributed to ECLAC staff and the UNCT concerning human rights related issues. The network is used, inter alia, to disseminate regularly recommendations adopted by the treaty bodies as well as extra-conventional mechanisms concerning countries of the region.

76. OHCHR has continued to strengthen its cooperation with the Organization of American States (OAS) and the Inter-American Commission on Human Rights (IACHR) as its main counterpart in the Inter-American System, following the OHCHR Mission to the secretariat of the IACHR and to the OAS in July 2002. In addition to the participation of OHCHR's Regional Representative in major OAS meetings during 2003 and 2004, short-term exchanges of personnel between OHCHR and IACHR were encouraged, and a visit by IACHR representatives to OHCHR headquarters in Geneva was organized in January 2004, to improve the knowledge of OHCHR staff of the Inter-American Human Rights System.

77. In the Latin American and Caribbean region, OHCHR has supported the establishment and strengthening of the Network of National Human Rights Institutions of the Americas. The Office has supported annual meetings of the Network as well as seminars on specific issues, such as the rights of indigenous peoples, the rights of persons with disabilities and prevention of torture. Such meetings allow for an exchange of experiences and best practices among national human rights institutions of the region and contribute to strengthening cooperation between them. The Regional Representative participated in the General Assembly of the Network, held in Buenos Aires in June 2004. He also participated in the Annual Congress of the Ibero-American Federation of the Ombudsman, held in Quito in November 2004. The OHCHR also supported the participation of an expert on national human rights institutions in the annual meeting of the Caribbean Ombudsman Association in May 2004.

IV. Conclusion

78. **The Office of the United Nations High Commissioner for Human Rights will continue to pay special attention to the development or strengthening of regional arrangements for the promotion and protection of human rights, and will ensure that, as indicated in this report, all its activities and strategies at regional and subregional levels are aimed at strengthening cooperation between the United Nations and regional arrangements in the field of human rights. The Office of the High Commissioner will continue to report on the results of the action taken in that respect, in response to the decisions by, and guidance received on this subject from, the General Assembly.**

United Nations A/59/324

General Assembly

Distr.: General
1 September 2004

Original: English

Fifty-ninth session
Item 107 (a) of the provisional agenda*
Human rights questions: implementation of human rights instruments

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report submitted by the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Theo van Boven, in accordance with Assembly resolution 58/164 of 22 December 2003.

* A/59/150.

04-49852 (E) 071004

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 58/164 and Commission on Human Rights resolution 2004/41, the Special Rapporteur refers to his main report to the Commission at its sixtieth session and its three addenda (E/CN.4/2004/56 and Add.1-3) and to the activities he has been carrying out since their submission. He also addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

The Special Rapporteur, as a follow-up to reports submitted to the Assembly at previous sessions on the issue of the prohibition of torture and other forms of cruel, inhuman, or degrading treatment or punishment in the context of anti-terrorism measures, first draws attention to attempts to circumvent the absolute and non-derogable nature of the prohibition. He then discusses the principle of non-refoulement, recalling the jurisprudence underlying the principle and noting the increase in practices that undermine it. Lastly, the Special Rapporteur draws attention to the most common consequences faced by victims of torture. In addition to the physical and psychological damage caused to the victims, the consequences of torture affect victims' families and the community at large. A holistic understanding of the impact of torture on its victims is thus necessary to develop adequate assistance.

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I. Introduction

1. The present report is the sixth submitted to the General Assembly by the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to General Assembly resolution 58/164 and Commission resolution 2004/41. It is the third report submitted by the present mandate-holder, Theo van Boven. This report covers issues of special concern to the Special Rapporteur, in particular overall trends and developments with respect to issues falling within his mandate.

2. The Special Rapporteur draws attention to his report to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/56 and Add.1-3), in which he recalled a number of guarantees for individuals deprived of their liberty with a view to protecting them from the risk of torture and other forms of ill-treatment; examined the question of HIV/AIDS and torture; and provided information on the follow-up to the preliminary study of the Special Rapporteur on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms (E/CN.4/2003/69). The annex to the main report contains an index of the reports submitted by the three successive mandate-holders.

3. As reflected in addendum 1 to his report to the Commission (E/CN.4/2004/56/Add.1), in the period from 15 December 2002 to 15 December 2003, the Special Rapporteur sent 154 letters to 76 Governments containing allegations of individual cases of torture or general references to the phenomenon of torture. The Special Rapporteur also sent 71 letters reminding Governments of a number of cases that had been transmitted in previous years. He sent 369 urgent appeals to 80 Governments on behalf of individuals with regard to whom concern was expressed that they might be at risk of torture or other forms of ill-treatment. In addition to the annual addendum on communications, the Special Rapporteur issued an addendum on the state of follow-up to recommendations made after country visits (E/CN.4/2004/56/Add.3).

4. At the invitation of the Government of Spain, the Special Rapporteur undertook a visit to that country from 5 to 10 October 2003 during which he met various government officials, representatives of civil society organizations and alleged torture victims and their relatives (see E/CN.4/2004/56/Add.2). The Special Rapporteur expressed his appreciation to the Government of Spain for the full cooperation extended to him during the mission. The Special Rapporteur concluded that torture or ill-treatment is not systematic in Spain, but that the system as it is practised allows torture or ill-treatment to occur, particularly with regard to persons detained incommunicado in connection with terrorist-related activities. Accordingly, he recommended a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

5. Since the submission of the report to the Commission on Human Rights, during the period from 16 December 2003 to 31 July 2004, the Special Rapporteur sent 94 letters concerning allegations of torture to 42 Governments, as well as 237 urgent appeals to 58 Governments on behalf of persons who might be at risk of torture or other forms of ill-treatment.

6. With respect to fact-finding missions, the Special Rapporteur expected to undertake a two-week mission to China at the end of June 2004. However, it was postponed at the request of the Government until later in the year. The Special Rapporteur continued to actively consider invitations for fact-finding visits extended by the Governments of Bolivia, Georgia, Nepal and Paraguay. These visits have not yet materialized for reasons beyond the control of the Governments concerned. He regrets that his earlier requests to visit Algeria, Egypt, Equatorial Guinea, India, Indonesia, Israel, the Russian Federation with respect to the Republic of Chechnya, Tunisia and Turkmenistan have not yet led to results. In January 2004, a request was made jointly with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to visit the naval base of the United States of America at Guantanamo Bay.

7. The Special Rapporteur issued press statements concerning reports of abuse of Iraqi prisoners by Coalition Forces (3 May 2004), and the announcement of the postponement of his visit to China (16 June 2004). He also issued several press statements jointly with other special procedures mandate-holders, including on the human rights situation in Nepal (9 March and 14 July 2004) and on widespread abuses in the Darfur region of the Sudan (26 March 2004), and an appeal to the Government of the Islamic Republic of Iran to comply with human rights norms in the case of the investigation into the death of a journalist (27 July 2004).

8. On 26 February 2004, the Special Rapporteur made a presentation on the occasion of the award of the 2004 Prize of the Foundation for Geneva to the Association for the Prevention of Torture and the World Organization against Torture.

9. From 25 to 27 April 2004, the Special Rapporteur participated in a training seminar organized by the Organization for Security and Cooperation in Europe in Ohrid, the former Yugoslav Republic of Macedonia, on international and domestic obligations regarding the treatment of detainees and prisoners. In addition to the Special Rapporteur, representatives of the European Court of Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and local legal experts made presentations.

10. On 18 May 2004, the Special Rapporteur was honoured for his career and leadership in the field of human rights, and for his role as the Special Rapporteur on torture by the Bellevue Hospital/New York University Program for Survivors of Torture, an organization which has provided multidisciplinary treatment services to more than 1,000 survivors of torture from 70 countries.

11. From 21 to 25 June 2004, the Special Rapporteur chaired the eleventh meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme. The report of that meeting is contained in document E/CN.4/2005/5.

12. On 26 June 2004, on the occasion of the United Nations International Day in Support of Victims of Torture, the Special Rapporteur, together with the Committee against Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Acting United Nations High Commissioner for Human Rights issued a joint statement.

II. The absolute and non-derogable prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment

13. Since the submission of his previous reports to the General Assembly, the Special Rapporteur has received with serious concern allegations of attempts to circumvent the absolute nature of the prohibition of torture and other forms of ill-treatment in the name of countering terrorism, particularly in relation to the interrogation and conditions of detention of prisoners. In this regard, the Special Rapporteur would like to draw attention to his previous reports (see A/57/173, paras. 2-35 and A/58/128, paras. 11-22).

14. Legal arguments of necessity and self-defence, invoking domestic law, have recently been put forward, aimed at providing a justification to exempt officials suspected of having committed or instigated acts of torture against suspected terrorists from criminal liability. While being aware of the threats posed by terrorism and recognizing the duty of States to protect their citizens and the security of the State against such threats, the Special Rapporteur would like to reiterate that the absolute nature of the prohibition of torture and other forms of ill-treatment means that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.

15. The condoning of torture is per se a violation of the prohibition of torture. Moreover, domestic law cannot be invoked as a justification for failure to comply with international treaty obligations and customary international law. The Special Rapporteur wishes to recall that no executive, legislative, administrative or judicial measure authorizing recourse to torture and cruel, inhuman or degrading treatment or punishment can be considered as lawful under international law and, therefore, any measure of that kind would engage the State's responsibility, whether it be an act of torture directly committed by, or at the instigation of, or with the consent or acquiescence of a public official or any other person acting in an official capacity on behalf of that State. A head of State, also in his or her capacity as commander-in-chief, should therefore not authorize his or her subordinates to use torture, or guarantee immunity to the authors and co-authors of and accomplices to torture. The argument that public officials have used torture having been advised by lawyers or experts that their actions were permissible is not acceptable either. No special circumstance may be invoked to justify a violation of the prohibition of torture for any reason, including an order from a superior officer or a public authority [1]

16. The Special Rapporteur notes with serious concern that attempts have been made to narrow the scope of the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. For instance, torture has reportedly been defined elsewhere as physical pain that is difficult to endure, and which should be equivalent to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death. Similarly, it has reportedly been argued that some harsh methods should not be considered as torture, but merely as cruel, inhuman or degrading treatment or punishment and therefore not absolutely prohibited and permissible in exceptional circumstances. In particular, it was reportedly asserted that permissible methods of interrogation could include the deprivation of essential

human needs, suffocation with a wet cloth and death threats. In this respect, the Special Rapporteur wishes to stress that the definition contained in the Convention cannot be altered by events or in accordance with the will or interest of States. The Special Rapporteur also wishes to recall that the prohibition applies equally to torture and to cruel, inhuman or degrading treatment or punishment.

17. The Special Rapporteur has recently received information on certain methods that have been condoned and used to secure information from suspected terrorists. They notably include holding detainees in painful and/or stressful positions, depriving them of sleep and light for prolonged periods, exposing them to extremes of heat, cold, noise and light, hooding, depriving them of clothing, stripping detainees naked and threatening them with dogs. The jurisprudence of both international and regional human rights mechanisms is unanimous in stating that such methods violate the prohibition of torture and ill-treatment. In 1997, the Committee against Torture concluded that "methods [including]: (1) restraining in very painful conditions, (2) hooding under special conditions, (3) sounding of loud music for prolonged periods, (4) sleep deprivation for prolonged periods, (5) threats, including death threats, (6) violent shaking, and (7) using cold air to chill ... are, in the Committee's view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination".[2] Similarly, in the *Loayza Tamayo* case, the Inter-American Court of Human Rights ruled that, "even in the absence of physical injuries, psychological and moral suffering, accompanied by psychic disturbance during questioning, may be deemed inhuman treatment. The degrading aspect is characterized by the fear, anxiety and inferiority induced for the purpose of humiliating and degrading the victim and breaking his physical and moral resistance ... That situation is exacerbated by the vulnerability of a person who is unlawfully detained ... Any use of force that is not strictly necessary to ensure proper behaviour on the part of the detainee constitutes an assault on the dignity of the person ... in violation of Article 5 of the American Convention. The exigencies of the investigation and the undeniable difficulties encountered in the anti-terrorist struggle must not be allowed to restrict the protection of a person's right to physical integrity."

18. The Special Rapporteur wishes to remind the General Assembly that, according to the Human Rights Committee, the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person, although not specified in the list of non-derogable rights, cannot be made subject to lawful derogation under article 4 of the International Covenant on Civil and Political Rights.[3]

19. According to allegations received, acts of torture and ill-treatment have been reportedly inflicted on suspected terrorists by private contractors. In this regard, the Special Rapporteur wishes to recall that, according to the Human Rights Committee, "the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violation of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights insofar as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due

diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities".[4]

20. The status and conditions of detention of persons suspected of terrorism also remain subjects of great concern, not only for the Special Rapporteur on torture, but also for the other mandate-holders of the Commission on Human Rights. In the aftermath of 11 September 2001, thousands of persons suspected of terrorism, including children, have been detained, denied the opportunity to have their legal status determined and prevented from having access to lawyers. Some of them are said to be still held in solitary confinement, which in itself may constitute a violation of the right to be free from torture.[5] In July 2004, the International Committee of the Red Cross expressed its concern that an unknown number of people continued to be detained outside any legal framework.

21. In this context, the Special Rapporteur refers to the joint statement adopted on the final day of the meeting of the special procedures of the Commission on the protection of human rights in the context of anti-terrorism measures, which included a request that the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture visit persons detained on grounds of alleged terrorism or other violations in Afghanistan, Iraq and the military base at Guantanamo Bay (see E/CN.4/2005/5, annex I).

22. The Special Rapporteur wishes to reiterate that the maintenance of secret places of detention should be abolished under law and that it should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. He also recalls Commission on Human Rights resolution 2004/41, in which the Commission reminded all States that prolonged incommunicado detention could facilitate the perpetration of torture and could in itself constitute a form of cruel, inhuman or degrading treatment or even torture, and urged all States to respect the safeguards concerning the liberty, security and dignity of the person. It should also be stressed that although the status of detainees may remain unclear, there is no uncertainty as to the international obligations, standards and protections that apply to them, the prohibition of torture being applicable to all individuals without exception and without discrimination, regardless of their legal status. The Special Rapporteur wishes to repeat his earlier recommendation that all detained persons should be given the ability to challenge the lawfulness of their detention, e.g. through habeas corpus or *amparo*, and that such procedure should function expeditiously (see E/CN.4/2004/56, para. 39).

23. The Special Rapporteur is seriously concerned about recent reports that some national authorities have deemed evidence that may have been obtained under torture admissible in judicial proceedings. It should be recalled that according to article 15 of the Convention against Torture, States Parties shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The Committee against Torture has stated that "the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence" is one of the essential means of preventing torture (A/54/44, para. 45).

24. The Special Rapporteur, recalling his own general recommendations, wishes also to refer to the statement issued by the Coalition of International Non-Governmental Organizations against Torture (CINAT) on 14 May 2004 and express his full support for its recommendations, in particular its call for independent, prompt and exhaustive investigations into and, where there is sufficient evidence, prosecution of each and every allegation of torture or other abuse, and for guarantees that there is no impunity for anyone found responsible, regardless of position or rank. He also shares its view that a comprehensive review of interrogation methods should be undertaken to ensure that they comply with international standards prohibiting torture and ill-treatment, and that immediate access of human rights monitors to detention facilities worldwide should be guaranteed.

III. The principle of non-refoulement

25. In his report to the General Assembly at its fifty-seventh session, which included a section on the prohibition of torture and other forms of ill-treatment in the context of anti-terrorism measures, one of the issues raised was the right to seek asylum, the principle of non-refoulement and extradition (see A/57/173, paras. 27-35). There is no doubt that all human rights issues and, in particular, those pertaining to the prohibition of torture and other forms of ill-treatment continue to be highly relevant to the struggle to prevent and combat acts and strategies of terrorism. Therefore, the Special Rapporteur reverts to these issues and wishes to pay particular attention to the principle of non-refoulement which, like other human rights principles, risks being eroded.

26. It must be recalled that the principle of non-refoulement is firmly anchored in international human rights law, notably in article 3 of the Convention against Torture, which states that "no State Party shall expel, return 'refouler', or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". In the same vein, the Human Rights Committee considered the link between removal, expulsion or refoulement and torture in its General Comment No. 20: "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement".

27. With respect to the principle of non-refoulement, it is the essential responsibility of States to prevent acts of torture and other forms of ill-treatment being committed, not only against persons within any territory under their own jurisdiction, as spelled out in article 2, paragraph 1, of the Convention, but also to prevent such acts by not bringing persons under the control of other States if there are substantial grounds for believing that they would be in danger of being subjected to torture. As the International Criminal Tribunal for the Former Yugoslavia cogently argued in *Furundzija*: "It is insufficient merely to intervene after the infliction of torture, when the physical or moral integrity of human beings has already been irremediably harmed. Consequently, States are bound to put in place all those measures that may pre-empt the perpetration of torture".[6]

28. The principle of non-refoulement is an inherent part of the overall absolute and imperative nature of the prohibition of torture and other forms of ill-treatment. In

this respect, the Special Rapporteur recalls the opinion of the European Court of Human Rights in the case of *Chahal v. the United Kingdom*, in which the Court stated that "the prohibition provided by article 3 [of the European Convention on Human Rights] against ill-treatment is absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion ... In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration."[7]

29. The Special Rapporteur is seriously concerned about an increase in practices that undermine this principle. One such practice is for the police authorities of one country to hand over persons to their counterparts in other countries without the intervention of a judicial authority and without any possibility for the persons concerned to contact their families or their lawyers. The Committee against Torture, while recognizing the need for close cooperation between States in the fight against crime and for effective measures to be agreed upon for that purpose, found that practice to be in violation of article 3 of the Convention, as well as of the right to due process.[8] In this regard, the Special Rapporteur wishes also to express his agreement with the views propounded by the Commissioner for Human Rights of the Council of Europe that, in cases where the risk of torture and ill-treatment is elevated, it is particularly important that proceedings leading to expulsion respect appropriate legal safeguards, at the very least a hearing before a judicial instance and the right to appeal.

30. Another practice that is increasingly undermining the principle of non-refoulement is the reliance on assurances, sought by the sending country from the receiving country, that transferred suspects will not be subjected to torture or cruel, inhuman or degrading treatment or punishment. The Special Rapporteur is not of the opinion that requesting and obtaining assurances as a precondition for the transfer of persons under terrorist or other charges should be ruled out altogether. In fact, in his report to the General Assembly at its fifty-seventh session he appealed to all States to ensure that, in all appropriate circumstances, before extraditing persons under terrorist or other charges, the receiving State has provided an unequivocal guarantee to the extraditing authorities that the persons concerned will not be subjected to torture or any other form of ill-treatment, and that a system to monitor the treatment of such persons has been put into place to ensure that they are treated with full respect for their human dignity (A/57/173, para. 35).

31. However, since the Special Rapporteur submitted his report to the General Assembly two years ago, he has come across a number of instances where there were strong indications that diplomatic assurances were not respected and that transferred persons allegedly were treated in violation of the absolute prohibition of torture and other forms of ill-treatment (see E/CN.4/2004/56/Add.1, para. 1827). The issue arises of whether the practice of resorting to assurances is not becoming a politically inspired substitute for the principle of non-refoulement which, it must not be forgotten, is absolute and non-derogable. The problematic nature of relying on diplomatic assurances was clearly pointed out by the Commissioner for Human Rights of the Council of Europe: "The weakness inherent in the practice of diplomatic assurances lies in the fact that where there is a need for such assurances, there is clearly an acknowledged risk of torture and ill-treatment. Due to the

absolute nature of the prohibition of torture or inhuman or degrading treatment, formal assurances cannot suffice where a risk nonetheless remains."[9]

32. The Special Rapporteur bears in mind that, in its resolution 1373 (2001) the Security Council decided that all States shall, inter alia, deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens. At the same time, he notes Security Council resolution 1456 (2003), which stresses that States must ensure that any measure taken to combat terrorism complies with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law. Full respect for basic standards of international human rights law and, in particular, for the absolute prohibition of torture in the application of national measures and in international cooperation is an issue that is integral to the mandate of the Special Rapporteur. It is from this perspective that he puts forward some further considerations as to factors and circumstances that should be taken into account when examining the issue of reliance on diplomatic assurances. While the Special Rapporteur does not intend to provide an exhaustive list of such factors and circumstances, his concerns about the ongoing erosion of the non-refoulement principle prompts him to spell out certain requirements in that regard.

33. It is important to keep in mind the basic international standard as set out in international human rights law, notably in the Universal Declaration of Human Rights (art. 5), the International Covenant on Civil and Political Rights (art. 7), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 3), the European Convention on Human Rights (art. 3) and the American Convention on Human Rights (art. 5). In its recent General Comment No. 31, the Human Rights Committee reaffirmed that the obligation of States Parties "to respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are *substantial grounds for believing that there is a real risk of irreparable harm*, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any other country to which the person may subsequently be removed" (para. 12, emphasis added). Similar wording also constitutes the quintessence of article 3 of the Convention against Torture and General Comment No. 1 (1996) of the Committee against Torture concerning the implementation of this article.

34. The factors and circumstances to be taken into account with respect to the non-refoulement principle may relate to the situation prevailing in the country to which a person is to be removed or may subsequently be removed (prevailing political conditions), or to the vulnerability of the person concerned to torture or other forms of ill-treatment (personal circumstances). The prevailing political conditions alone, or in combination with personal circumstances, are determining factors for the application of the non-refoulement principle.

35. Article 3, paragraph 2, of the Convention against Torture stipulates that, for the purpose of determining whether there are substantial grounds for believing that a person would be in danger of being subjected to torture, all relevant considerations *must be taken into account*, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. This definition has a long history in United Nations human rights terminology[10] and is an indication of the type and nature of situations warranting

special examination by the Commission on Human Rights. It is clear from this wording that the existence of a consistent pattern of gross, flagrant or mass violations in a country is not necessarily the only determining factor, that it may have to be assessed together with other relevant considerations, in particular those relating to the vulnerability of the person concerned.

36. When assessing the prevailing political conditions that have to be taken into account in connection with the non-refoulement principle, it is also advisable to refer to article 20 of the Convention against Torture which provides for a special inquiry by the Committee against Torture in cases where the Committee has received information containing well-founded indications that torture has been systematically practised. In this connection, the Special Rapporteur recalls the definition of the Committee against Torture as regards the "systematic" practice of torture: "torture is practised systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between the policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice."[11]

37. The factors and circumstances contained in articles 3 and 20 of the Convention, in terms of a "consistent pattern of gross, flagrant or mass violations of human rights" and the "systematic practice of torture", cover common ground, although the former term is broader in scope and not clearly defined. Thanks to the efforts of the Committee against Torture, the latter term provides, for present purposes, more concrete guidance, encompassing torture both as a State policy and as a practice by public authorities over which a Government has no effective control. In circumstances where this definition of "systematic practice of torture" applies, the Special Rapporteur believes that the principle of non-refoulement must be strictly observed and diplomatic assurances should not be resorted to.

38. As stated above, among the factors and circumstances to be taken into account are also the personal circumstances of the person whose removal is at stake. His or her vulnerability to torture or to other forms of ill-treatment must be a determining factor. As stated in General Comment No. 1 of the Committee against Torture on the implementation of article 3 of the Convention, one such factor is whether the person has already been tortured or maltreated by, or at the instigation of, or with the consent or acquiescence of a public official in the (recent) past. Another factor is whether he or she has engaged in political or any other activity within or outside the State concerned that would make him or her particularly vulnerable to the risk of being in danger of torture were the person to be removed to the State in question.

39. The Special Rapporteur also wishes to draw attention to factors and circumstances that stem from conditions that may prevail in a country and touch at the same time upon the vulnerability of persons whose removal to such a country is at stake. Reference is made here to persons belonging to any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds, such as sexual orientation, and who for that reason are targeted by the

authorities or, with the connivance of the authorities, risk being subjected to persecution or systematic discrimination amounting to torture or other cruel, inhuman or degrading treatment or punishment.[12] These factors and circumstances also have to be taken into account in determining the non-refoulement issue.

40. In the light of the imperative and absolute nature of the non-refoulement principle, the Special Rapporteur is compelled to state that he is reticent with regard to the practice of resorting to diplomatic assurances, in particular if that practice becomes a substitute for the principle of non-refoulement. However, acknowledging that there are situations and cases where resort to diplomatic assurances should not be ruled out a priori, it is, in the Special Rapporteur's opinion essential that, as stated in his report of two years ago (A/57/173), such assurances contain an unequivocal guarantee that the person concerned will not be subjected to torture or any other form of ill-treatment, and that a system to monitor the treatment of that person has been put into place. In view of the fact that assurances may be no more than empty gestures,[13] the Special Rapporteur wishes to put forward a number of essential requirements that diplomatic assurances should fulfil in terms of protection from torture and other forms of ill-treatment in order to make them solid, meaningful and verifiable.

41. As regards guarantees for individuals deprived of their liberty, the Special Rapporteur has drawn up a list of basic safeguards contained in international human rights norms and standards and in general recommendations included in previous reports (E/CN.4/2004/56, paras. 27-49). While this list of basic safeguards must serve as a frame of reference with respect to all persons deprived of their liberty, a number of them need to be explicitly included in the assurances to be obtained from countries to which persons are handed over. Thus, assurances should as a minimum include provisions with respect to prompt access to a lawyer (ibid., para. 32), recording (preferably video-recording) of all interrogation sessions and recording the identity of all persons present (ibid., para. 34), prompt and independent medical examination, (ibid., para. 36) and forbidding incommunicado detention or detention at undisclosed places (ibid., para. 37).

42. Finally, a system of effective monitoring is to be put in place so as to ensure that assurances are trustworthy and reliable. Such monitoring should be prompt, regular and include private interviews. Independent persons or organizations should be entrusted with this task and they should report regularly to the responsible authorities of the sending and the receiving States.

IV. The impact of torture on victims

43. In the fulfilment of his mandate, the Special Rapporteur not only receives allegations of torture and other cruel, inhuman or degrading treatment or punishment, but also information on the medical, psychological, social and other consequences thereof. A description of the various effects or consequences of torture cannot possibly be exhaustive. However, on the basis of the information received over the years, including direct testimonies during fact-finding missions, the Special Rapporteur would like to draw attention to some of the most common consequences faced by torture victims, also often referred to as torture survivors in recognition of those who have lived through this traumatic experience. In that respect, it must be emphasized that one of the consequences of the use of torture

may be, in quite a number of instances, the death of the victim, be it intentional or not.

44. In the opinion of the Special Rapporteur, it is crucial to identify the many aspects of the impact of torture on its victims in order to better appraise and address their needs, in particular from a medico-psychosocial point of view, and to make recommendations that would ensure the most adequate and effective reparation. Most, if not all, torture survivors say that they will never forget what they have been through, but can only learn to live with it.[14]

45. The first Special Rapporteur on torture, Peter Kooijmans, described, in his first report to the Commission on Human Rights (E/CN.4/1986/15), how the victim's personality, which constitutes man's inherent dignity, could be destroyed through torture. As he pointed out, "[t]orture is the violation par excellence of the physical and mental integrity — in their indissoluble interdependence — of the individual being. Often a distinction is made between physical and mental torture. This distinction, however, seems to have more relevance for the means by which torture is practised than for its character. Almost invariably the effect of torture, by whatever means it may have been practised, is physical and psychological. Even when the most brutal physical means are used, the long-term effects may be mainly psychological, even when the most refined psychological means are resorted to, there is nearly always the accompanying effect of severe physical pain. A common effect is the disintegration of the personality (para. 4)." Indeed, in addition to the physical injuries, infliction of physical pain creates fear, anxiety, frustration and humiliation. According to the information received, infliction of pain is also frequently accompanied by mental pressure, such as verbal abuse, mocking, degrading treatment, threats or sham executions. Whether it is accompanied by mental pressure or not, the infliction of physical pain invariably leads to mental suffering as well. Thus, treating only the physical signs of torture cannot be sufficient.

46. Poor detention conditions, such as overcrowding, inadequate sanitation and hygiene, lack of food and medical assistance, not only may put at risk the physical integrity of detainees, but have far-reaching consequences on their mental integrity. The Special Rapporteur has observed that in some cases detainees are deliberately subjected to poor conditions while in pre-trial detention in order to break their will and to elicit confessions and information, or to be able to present them before the court as unwholesome and dangerous, which would erode any sympathy they might have received from the judge.[15] The Special Rapporteur also notes that prolonged solitary confinement in conditions of severe material deprivation and with no or little activity may have a serious impact on the psychological and moral integrity of the prisoner.[16]

47. Torture and other forms of ill-treatment may take such a wide variety of forms that the whole range of their physical sequelae can hardly be exhaustively described. However, amongst the most common sequelae are loss of hearing or sight, skin lesions, fractures, sexual dysfunction, cardiopulmonary, gastrointestinal, musculoskeletal and neurological problems, and infectious diseases.[17] It must be noted that victims are often subjected to multiple forms of torture and ill-treatment, which may result in overlapping injuries. While some of the physical sequelae of torture may be medically treated and may eventually disappear with time, others will remain a visible stigma, sometimes still painful, that victims will have to bear

for the rest of their lives. It will constantly remind them of the torture experience, which has considerable psychological effects.

48. The lack of medical treatment for torture survivors in custody may not only be considered as a prolongation of the torture,[18] it may also have far-reaching consequences in terms of their rehabilitation. Indeed, victims with serious physical injuries who are left medically unattended because of lack of will or means may see their condition worsen to the point that medicine may not be of any help once they are referred to the medical profession. A number of cases have been transmitted to the Special Rapporteur regarding pre-trial detainees who, after having been tortured upon arrest or during interrogation sessions, have been refused medical attention.

49. The most common diagnosis of psychiatric symptoms among torture survivors is said to be post-traumatic stress disorder. Torture victims may suffer from after-effects such as sleep disturbance, irritability, anxiety, impaired memory, concentration deficiencies and depression. The Special Rapporteur nevertheless would like to emphasize that each individual responds in his own way to the experience of having been tortured, depending on various factors, such as age, gender, family status, socio-economic status, cultural background, etc. Another factor is the so-called "psychological preparedness for trauma", which includes a strong belief system (political, religious or other), the ability to give meaning to the traumatic experience, predictability or controllability of traumatic stressors or prior immunization to traumatic stressors in the context of political activity.[19]

50. In addition to the physical and psychological damage, torture may also have a serious impact on the survivor's family and social life. Physical and psychological impediments caused by torture may create difficulties in resuming satisfactory relationships with the family, in particular with spouses and children. After-effects of torture, such as irritability, resentment and depression, may also impair interpersonal relationships. Feelings of fear and insecurity, as well as lack of self-confidence or confidence in the authorities that were supposed to guarantee a secure environment, may also make difficult a smooth readaptation into society. Permanent physical wounds, psychological problems and cognitive impairment may also reduce the survivor's working capacity. Social disabilities and loss of employment may lead to social and economic exclusion, which would have an impact on the whole family, especially when the torture survivor was the principal earner.[20] Some torture victims may also decide to leave their home place for fear of continued persecution, because of the social stigma or in an attempt to forget the experience. They, and often their relatives, would have thus to start a new life with all the socio-economic and other consequences this involves.

51. The torture of one individual affects the entire family and community of the victim. When the conditions in which a person is detained or the treatment to which she or he is subjected are made known to her or his relatives — sometimes intentionally, with a view to putting pressure on them or to punishing them — the impact thereof may also amount to a form of ill-treatment. The anguish is heightened when the family is not informed of the fate and whereabouts of the victim. In this respect, the Special Rapporteur would like to remind the General Assembly that the Human Rights Committee has held that the practice of disappearance may be considered a form of torture both for the victim and for the relatives.[21] Furthermore, once the victim is released from custody, the family may be faced with a different person, with physical and mental handicaps and who needs

special care. Relatives are not always prepared to assume such a responsibility or know how to address the problems. Thus, rehabilitation programmes should also include the family of the torture victim. When a person has been tortured for political activities or on suspicion of crime, the victim's family may also face social ostracism and discrimination.

52. Torture may also have an impact on the local community and, on a larger scale, on a whole society, especially when its practice is widespread or of a systematic nature. The Special Rapporteur observes that in some instances, the purpose of torture is to generate terror among the population, a common strategy in repressive regimes. He notes with concern that systematic rape has been used as a practice of torture to terrorize and humiliate selected ethnic groups. He would like to refer to the International Criminal Tribunal for Rwanda, which held in the Akayesu judgement that "[s]exual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole".[22] The phenomenon of torture is often surrounded by a rule of silence among the population, and sometimes even amongst the torture survivors themselves, which may create or reinforce a sense of loneliness and misunderstanding. The effects of torture may sometimes even be felt in the next generations.

53. Torture of women frequently includes sexual violence with a view to humiliating and degrading the victim. Besides the physical and psychological damage caused by the torture, sexual abuse has additional consequences for women, such as the risk of being infected with sexually transmitted diseases and of pregnancy, miscarriage, forced abortion or sterilization. In a large number of socio-cultural contexts, rape and sexual abuse continue to entail the stigmatization and ostracism of the victim upon her return to her community and family. The social stigma attached to rape in most societies often leads to the rejection of the victim by her male relatives. The Special Rapporteur and his predecessors, as well as the Special Rapporteur on violence against women, its causes and its consequences have examined issues related to custodial violence against women and the effects of the sexualization of torture against women in previous reports.[23]

54. The Special Rapporteur continues to receive allegations of torture or cruel, inhuman or degrading treatment or punishment against children.[24] He notes that torture and other forms of ill-treatment have a serious impact on the psyche and development of children who have been subjected to its violence. The effects of torture on children and teenagers will vary, depending on the intensity of the treatment they have been subjected to, but also on the victim's age, developmental stage and cognitive abilities. Symptoms will be similar to those observed in adults, but children may also develop behaviours that are not appropriate for their age. Torture also has a significant impact on children who have witnessed acts of torture or whose parents or other close family members have been tortured. Children of torture survivors may indeed face problems arising from the post-traumatic behavioural problems of their parents. "The perception of parents as close and important persons who protect their children against danger is changed ... Under such conditions one of the children may take on an adult role in the family, taking care of smaller siblings and protecting the mother. This can limit the child's chances of taking part in age-related activities such as playing with other children, and the child's own need for support and contact with a reassuring adult is not met. The child's development may be delayed if there has been no chance to talk with an

adult about the traumatic events."[25] The Special Rapporteur acknowledges with appreciation initiatives taken by human rights international mechanisms and non-governmental organizations to examine the question of violence against children. In particular, he would like to refer to the one-day general discussion on violence against children organized by the Committee on the Rights of the Child in September 2000 and September 2001 (see CRC/C/100, chap. V and CRC/C/111, chap. V) and the International Conference on Children, Torture and Other Forms of Violence: Facing the Facts, Forging the Future, organized in Tampere, Finland, in December 2001 by the World Organization against Torture. He also welcomes the appointment by the Secretary-General of an independent expert to lead a global study on violence against children.

55. While the Special Rapporteur realizes that torture survivors who flee their place of origin are often a small minority and that the overwhelming majority of torture victims are ordinary persons who have no means of seeking remedy or asylum, he also notes that torture survivors who flee their place of origin are exposed to the extra trauma of being forcibly uprooted. Therefore, in addition to suffering from the effects of torture, victims who become internally displaced persons, asylum-seekers and refugees are likely to experience another significant emotional effect, which is a deep feeling of loss — loss of a home, possessions, work, loved ones and other close relationships, life style, status, but also loss of self-esteem, trust or personal identity.

56. It is often difficult for the victims to speak about their traumatic experience. However, the Special Rapporteur notes that most victims feel the need to break the silence. Denouncing what happened, often publicly, is the first step to being recognized as a victim. In addition, speaking out is also said to be the first step in the healing process for the survivors, their families and their communities. Legal and socio-political initiatives that aim at condemning torture, bringing perpetrators to justice and providing reparation are essential factors in alleviating the impact of torture on its direct and indirect victims.

57. Understanding the various impacts that torture may have on its victims is necessary in order to identify the specific needs of the victims and to provide assistance that would adequately meet these needs. Assistance to torture victims requires urgent interventions to provide medical aid or attention and to denounce abusive situations with a view to preventing further torture or the deterioration of the state of health of the person concerned. But support to torture victims also requires a more long-term assistance, which must be multidimensional and interdisciplinary. It is the view of the Special Rapporteur that medical aspects, including psychological ones, must not be separated from legal and social assistance. Such assistance should also be provided to the families of torture survivors and, if need be, to their communities.

58. A combination of medical assistance, financial support, social re-adaptation, legal redress and, in some cases, public acknowledgement is, in the Special Rapporteur's opinion, crucial. Only interdisciplinary assistance that integrates these various aspects can ensure adequate, effective and prompt reparation commensurate to the gravity of the violation and the harm suffered.[26] In his previous capacity as a special rapporteur of the Subcommission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur prepared a study on the question of the right to restitution, compensation and rehabilitation for victims of gross

violations of human rights and fundamental freedoms, in which he noted: "the application of statutory limitations often deprives victims of gross violations of human rights of the reparations that are due to them. The principle should prevail that claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations. In this connection, it should be taken into account that the effects of gross violations of human rights are linked to the most serious crimes to which, according to authoritative legal opinion, statutory limitations shall not apply. Moreover, it is well established that for many victims of gross violations of human rights, the passage of time has no attenuating effect; on the contrary, there is an increase in post-traumatic stress, requiring all necessary material, medical, psychological and social assistance and support over a long period of time" (E/CN.4/Sub.2/1993/8, para. 135).

59. The Special Rapporteur wishes to associate himself with the views of the United Nations Voluntary Fund for Victims of Torture: "the first projects financed by the fund especially addressed the immediate needs of torture victims, essentially by providing them with medical and psychological assistance. A trend that aims to offer them holistic assistance has subsequently emerged. In fact, many projects are taking a multidisciplinary approach, combining... [psychological, medical, social, legal and financial assistance]. These types of assistance are interdependent and mutually reinforcing, when they are jointly offered, in terms of their impact on the victims' lives, responding to the multifaceted nature of the effects of torture on the individual. For example, obtaining reparation for violations undergone has a very important psychological effect for the victims. Conversely, testifying to obtain reparation can have a significant destabilizing effect, with the possibility of an emotional collapse requiring sustained psychological attention. Moreover, social assistance, together with specific kinds of specialized therapies, such as occupational therapy, has both a psychological and economic impact on victims by enabling them to rebuild their self-confidence while developing new skills and meeting their relatives' material needs. Financial assistance, for its part, is sometimes connected with medical assistance when it is used to purchase medicines for the treatment of victims" (A/58/284, para. 35).

60. The Special Rapporteur would like to take this opportunity to reiterate his call upon all States and all sectors of national and international society to support to the maximum extent possible the United Nations Voluntary Fund for Victims of Torture. He also calls for support and assistance to rehabilitation centres to ensure that victims of torture are provided the means for as full a rehabilitation as possible. He has recently received troubling allegations according to which the authorities have threatened to close rehabilitation centres for victims of torture. In this connection, he would like to refer to resolution 2004/41 of the Commission on Human Rights, in which the Commission stressed "that national legal systems should ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation, and in this regard encourages the development of rehabilitation centres for victims of torture".

Notes

[1] See General Comments No. 20 (1992), para. 3, and No. 29 (2001), para. 7, adopted by the Human Rights Committee. See also *Official Records of the General Assembly, Fifty-first Session, Supplement No. 44* (A/51/44) paras. 180-222.

[2] Ibid., *Fifty-second Session, Supplement No. 44* (A/52/44), para. 257.

[3] General Comment No. 29 (2001), para. 13.

[4] General Comment No. 31 (2004), para. 8.

[5] See General Comment No. 20 (1998) of the Human Rights Committee, para. 20. See also European Court of Human Rights, *Ocalan v. Turkey*, No. 46221/99, paras. 231-232, judgement of 12 March 2003.

[6] *Prosecutor v. Anto Furundzija*, No. IT-95-17/1-T, Judgement, 10 December 1998, para. 148.

[7] *Chahal v. the United Kingdom*, No. 22414/93, para. 80, judgement of 15 November 1996, *Reports* 1996-V.

[8] Communication No. 63/1997: *Josu Arkauz Arana v. France, Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 44* (A/55/44), annex VIII, sect. A.2.

[9] Report by Mr. Alvaro Gil-Robes, Commissioner for Human Rights, on his visit to Sweden (21-23 April 2004), Comm DH (2004) 13, para. 19.

[10] See, in particular, the language used in resolutions 1235 (XLII) and 1503 (XLVIII) of the Economic and Social Council.

[11] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 44, Addendum 1* (A/48/44/Add.1), para. 39.

[12] See, for example, the Rome Statute of the International Criminal Court, article 7 (*h*).

[13] See Human Rights Watch, *"Empty Promises": Diplomatic Assurances No Safeguard Against Torture*, New York, 2004.

[14] The Special Rapporteur appreciates the information and documentation provided for the preparation of this report by Dr. Norberto Liwski, Chairman of the Comité de Defensa de la Salud, la Ética Profesional y los Derechos Humanos (Argentina) and member of the Committee on the Rights of the Child, and by the International Rehabilitation Council for Victims of Torture (IRCT).

[15] On this aspect, the Special Rapporteur would like to refer to the reports of his predecessor, Sir Nigel S. Rodley, on his visit to Brazil (E/CN.4/2001/66/Add.2, para. 28) and to the Russian Federation (E/CN.4/1995/34/Add.1, para. 71).

[16] In its General Comment No. 20, the Human Rights Committee notes that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7" (para. 6).

[17] For a more detailed view of the medical aspects of torture, see O.V. Rasmussen, "Medical aspects of torture. Torture types and their relation to symptoms and lesions in 200 victims, followed by a description of the medical profession in relation to torture" in *Danish Medical Bulletin*, vol. 37, supplement No. 1, January 1990.

[18] The Special Rapporteur notes that the European Court of Human Rights held that "[t]he lack of appropriate medical care may amount to treatment contrary to Article 3" (see *Keenan v. Turkey*, Application No. 27229/95, para. 111, ECHR, Reports of Judgements and Decisions, 2001-III).

[19] Basoglu and others, "Torture and mental health, a research overview", in *The Mental Health Consequences of Torture*, edited by Ellen Gerrity, Terence M. Keane and Farris Tuma, Kluwer Academic/Plenum Publishers, New York, 2001, p. 50.

[20] Ibid.

[21] *Quinteros v. Uruguay* (107/1981), *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40* (A/38/40), annex XXII.

[22] *The Prosecutor vs Jean-Paul Akayesu*, Case No. ICTR-96-4-T, decision of 2 September 1998, para. 731.

[23] See in particular, A/55/290, A/54/426, E/CN.4/1995/34, and E/CN.4/1998/54.

[24] The Special Rapporteur and his predecessors have examined the question of torture and cruel, inhuman or degrading treatment or punishment, including corporal punishment, against children in previous reports, in particular: A/57/173, A/55/290, A/54/426, E/CN.4/1996/35 and E/CN.4/1988/17.

[25] K. Smidt-Nielsen and L. Jacobsen, *Torture Survivors — Trauma and Rehabilitation*, IRCT, 1997, p. 126-127.

[26] With respect to the right to reparation, the Special Rapporteur would like to refer to the reports he and his predecessor submitted to the General Assembly in the past, in particular A/58/120, paragraphs 29 to 35, A/55/290, paragraphs 24 to 33, and A/54/42.., paragraphs 49-50. Also to be noted in this context are the draft basic principles and guidelines on the right to a remedy and reparation for violation for victims of [gross] violations of international human rights law and serious violations of international humanitarian law (E/CN.4/2004/57, annex, appendix I).